APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,938	08/27/2001	Kirsten Lambertsen	102964-2	4041

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EXAMINER
YANG, RYAN R

ART UNIT	PAPER NUMBER
2672	

DATE MAILED: 12/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

		Application No.	Applicant(s)
Office Action Summary		09/939,938	LAMBERTSEN, KIRSTEN
		Examiner	Art Unit
		Ryan R. Yang	2672

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>18 July 2005</u>.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-13</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-13</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on <u>27 August 2003</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

        1.☐ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 1-04)   **Office Action Summary**   Part of Paper No./Mail Date 11212005

DETAILED ACTION

1.   This action is responsive to communications: Amendment, filed on 7/18/2005.

This action is final.

2.   Claims 1-13 are pending in this application. Claims 1 and 6 are independent

claims. In the Amendment, filed on 7/18/2005, claim 1 was amended.

3.   This application has non-provisional application no. 60/229,410 filed 8/31/2000.

4.   The present title of the invention is "Virtual makeover system and method" as

filed originally.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be

found in a prior Office action.

6. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US

Patent 6,293,284 B1 to Rigg and further in view of Berend et al.

7. As per independent claim 1, Rigg discloses a makeover method, such method

comprising the steps of:

    configuring a computer to receive a facial image ("the customer scanning their own

actual image from their home computer", column 2, line 54-55);

    providing a catalog of beauty products (Rigg disclose in col. 3 lines 6-10);

    enabling the user to specify particular products to apply to the outlined features

(Rigg disclose in col. 3 lines 6-10); and

modifying the image to form a made over facial image having the particular products

applied to the outlined features, thereby enabling the user to visualize an intended

makeover (Rigg disclose in col. 3 lines 4-10).

Rigg discloses a virtual makeover method. Rigg does not explicitly disclose

"positioning a plurality of templates on the facial image, each template having a shape

that substantially corresponds to a feature on the facial image; enabling a user to adjust

the shape of each template to outline features on the facial image", however, this is

known in the art as taught by Berend et al., hereinafter Berend. Berend discloses a

system in which "The template is a view of the character or object which includes all the

lines (and, therefore, is defined by all the control points) which it is desired to show in

later pictures of the character or object", column 15, line 15-19. It is noted that Berend

not explicitly mention a face, however, since the application is used for character or

object, and since a face is part of a character, the method could be inherently used in

facial adjustment. As for a plurality of templates, since Berend teaches using a

template, it would have been obvious to one of ordinary skill in the art to extend it to

using a plurality of templates in order to better define an image.

Thus, it would have been obvious to one of ordinary skill in the art to incorporate the

teaching of Berend into Rigg because Rigg discloses a method of makeover and

Berend discloses the object of makeover could be adjusted in order increase the

flexibility of the system.

8.   As per dependent claim 2, Rigg and Berend demonstrated all the elements as

disclosed in the rejected claim 1, and Rigg further discloses wherein the modified facial

image shows the applied products in true color (col. 3 line 2-3).

9.   As per dependent claim 3, Rigg and Berend demonstrated all the elements as

disclosed in the rejected claim 1, and Rigg further discloses wherein the facial image is

an image of the user (col. 2 line 49-51).

10.   As per dependent claim 4, Rigg and Berend demonstrated all the elements as

disclosed in the rejected claims1, and further discloses the step of storing the specified

particular products as a palette for application to other or later images (col. 3 line 6-16).

11.   As per dependent claim 5, Rigg and Berend demonstrated all the elements as

disclosed in the rejected claim 1, and Rigg further discloses the step of storing the

specified particular products in a shopping cart, and enabling the user to purchase the

items in the shopping cart (col. 3 line 17-22).

Claim Rejections - 35 USC § 102

12.   Claim 6 is rejected under 35 U.S.C. 102(b) as being anticipated by Berend et al.

(5,692,117).

13.   As per independent claim 6, Berend discloses a method for outlining features in a

digital photographic image, comprising:

        receiving a digital photographic image from a user (Figure 3, scanner 195 could

typically scan a photographic image);

        providing a plurality of movable shapes for outlining features in the digital

photographic image (Figure 27a), each movable shape comprising a plurality of lines

connected by a plurality of points which together form the shape ("The template is a

view of the character or object which includes all the lines (and, therefore, is defined by

all the control points) which it is desired to show in later pictures of the character or

object", column 15, line 15-19);

enabling the user to select a point on the movable shape (where the control

points are selectable);

enabling the user to move each selected point to outline a specific feature in the

digital photographic image and thereby moving each line connected to the point moved

by the user so as to form a new shape ("The editing is preferably performed

interactively", column 15, line 40-41);

enabling the user to save each new shape in connection with the photographic

image ("At this point it may be convenient to save the key frame data to the mass

storage device 180", column 15, line 47-48).

14.   Claim 7 –13 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Berend et al. as applied to claim 6 above, and further in view of Rigg US 6,293,284 B1

as applied to claim 1 above.

15.   As per dependent claim 7, Berend demonstrated all the elements as disclosed in

the rejected claim 6.

Berend discloses a method of modifying an image. It is noted that Berend does not

explicitly disclose "providing a product database of beauty products available for

purchase, each beauty product being computer manipulable by the user such that

specific beauty products can be applied to and displayed in connection with the outlined

features of the photograph image; enabling the user to access the product database to

apply beauty products to the outlined features of the photographic image; and enabling

the user to select from the product database one or more beauty products available for purchase and to apply an image representative of the one or more products available for purchase in the photographic image. However, this is known in the art as taught by Rigg. Rigg discloses a product database of beauty products that are computer manipulable by the user in connection with the outlined features of the photographic image; and he also disclose a barcode symbol or an image for designating the product with the customer.

Thus, It would have been obvious to an ordinary person skilled in the art at the time of invention to combine the Rigg's program with the Berend's system to define the size and shape of the facial parts and to enable the user to apply the virtual makeover to those facial parts in order to let the user to view and evaluate various makeover on their face from the comfort of their own computer or terminal.

16.   As per dependent claim 8, Berend and Rigg demonstrated all the elements as disclosed in the rejected claim 7, and Rigg further discloses enabling the user adjust the application of the beauty product to the photographic image (col. 3 line 4).

Thus, It would have been obvious to an ordinary person skilled in the art at the time of invention to combine the Rigg's program with the Berend's system to define the size and shape of the facial parts and to enable the user to apply the virtual makeover to those facial parts in order to let the user to view and evaluate various makeover on their face from the comfort of their own computer or terminal.

17.   As per dependent 9, Berend and Rigg demonstrated all the elements as disclosed in the rejected claim 8, and Rigg further discloses the step of enabling the

user to adjust the application of the beauty product to the photographic image

comprises: enabling the user to select a desired width or opacity of the applied beauty

product (col. 1 lines 55-60 and col. 2 line 45-49; Rigg 's program does this by locating

color-requiring area and electronically painted over the image).

Thus, It would have been obvious to an ordinary person skilled in the art at the

time of invention to combine the Rigg's program with the Berend's system to define the

size and shape of the facial parts and to enable the user to apply the virtual makeover

to those facial parts in order to let the user to view and evaluate various makeover on

their face from the comfort of their own computer or terminal.

18.   As per dependent claim 10, Berend demonstrated all the elements as disclosed

in the rejected claim 7.

Berend discloses a method of modifying an image. It is noted that Berend does not

explicitly disclose wherein the beauty products are selected from the group consisting of

wigs, glasses, contacts, eye shadow, blush, eye liner, lipstick, lip liner, foundation, eye

brow color, eye lashes, hair color, and combinations thereof, however, this is known in

the art as taught by Rigg. Rigg discloses a method of makeover in which cosmetic could

be applied to various facial area (col. 3 lines 6-8).

Thus, it would have been obvious to one of ordinary skill in the art to incorporate the

teaching of Rigg into Berend to define the size and shape of the facial parts and to

enable the user to apply the virtual makeover to those facial parts in order to let the user

to view and evaluate various makeover on their face from the comfort of their own

computer or terminal.

19.   As per dependent claim 11, Berend demonstrated all the elements as disclosed

in the rejected claim 7.

Berend discloses a method of modifying an image. It is noted that Berend does

not explicitly disclose enabling the user to search for a specific beauty product in the

product database, however, this is known in the art as taught by Rigg. Rigg discloses

makeover color could be saved and pick (Abstract 10-14).

Thus, it would have been obvious to one of ordinary skill in the art to incorporate

the teaching of Rigg into Berend to define the size and shape of the facial parts and to

enable the user to apply the virtual makeover to those facial parts in order to let the user

to view and evaluate various makeover on their face from the comfort of their own

computer or terminal.

20.   As per dependent claim 12, Berend demonstrated all the elements as disclosed

in the rejected claim 7.

Berend discloses a method of modifying an image. It is noted that Berend does

not explicitly disclose enabling the user to save the selected beauty products as a

palette, however, this is known in the art as taught by Rigg. Rigg discloses makeover

color could be saved and pick from a color palette (Abstract 10-14).

Thus, it would have been obvious to one of ordinary skill in the art to incorporate

the teaching of Rigg into Berend to define the size and shape of the facial parts and to

enable the user to apply the virtual makeover to those facial parts in order to let the user

to view and evaluate various makeover on their face from the comfort of their own

computer or terminal.

21.   As per dependent 13, Berend and Rigg demonstrated all the elements as disclosed in the rejected claim 12, and Rigg further discloses enabling the user to communicate the palette to other users (col. 3 lines 17-22).

Thus, it would have been obvious to one of ordinary skill in the art to incorporate the teaching of Rigg into Berend to define the size and shape of the facial parts and to enable the user to apply the virtual makeover to those facial parts in order to let the user to view and evaluate various makeover on their face from the comfort of their own computer or terminal.

Response to Arguments

22.   Applicant's arguments with respect to claims 1-13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

23.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Inquiries

24.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan R Yang whose telephone number is (571) 272-7666. The examiner can normally be reached on M-F 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi can be reached on (571) 272-7664. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Ryan Yang
Primary Examiner
December 8, 2005